

REMARKS***Status of the claims***

Claims 1, 3-16, 18-31, 33-34, 36-41, 43, 44, 46-57 and 59-65 are pending.¹ Claims 1, 3-16, 18-31, 33-34, 36-41, 43-44, and 46-56 were previously withdrawn from consideration as drawn to a nonelected invention, and the species of cationic lipid was elected for searching purposes, resulting in withdrawal of claim 62 as drawn to a nonelected species. Claims 57, and 59-61, and 63-65 are currently under consideration.

Applicants reiterate the request for consideration of claims to additional species upon allowance of a generic claim, as set forth in 37 C.F.R. §1.141(a). Applicants also reiterate the request for rejoinder of withdrawn method claims upon allowance of the elected composition claims from which they depend, in accordance with MPEP §821.04.

Information Disclosure Statement

Applicants filed an Information Disclosure Statement on October 3, 2002. Applicants would appreciate the Examiner initialing and returning the Form PTO-1449, indicating that the references therein have been considered and made of record in this application.

Priority

The Office Action states that an application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence(s) of the specification or in an application data sheet by identifying the prior application by application number (37 CFR 1.78(a)(2) and (a)(5)). The Office Action further states that if the prior application is a non-provisional application, the specific reference must also include the relationship (*i.e.*, continuation, divisional, or continuation-in-part) between the applications, and that a certified copy of the priority document Australian Provisional Application No. PQ2593 must be filed to

¹ The Office Action Summary does not include claim 65 in the list of pending claims. Claim 65 has not been canceled and should be listed as pending.

fulfill statutory requirements. The Office Action also states that because the specification fails to indicate the relationship between the present application and PCT Application No.

PCT/SG00/00130, the effective filing date of the application is its U.S. filing date of March 1, 2002.

Applicants respectfully note that both the application data sheet that was filed with the application and the first sentence of the specification as amended in a Preliminary Amendment filed on March 1, 2002 contain a reference to PCT Application No. PCT/SG00/00130, to which the instant application claims priority. By virtue of this amendment, the first sentence of the specification has also been amended to indicate that this application is a continuation of the prior PCT application.

With regard to providing a certified copy of the Australian priority document, Applicants will file a certified copy prior to issuance of a patent from this patent application, in accordance with 35 U.S.C. §119(b). A photocopy of the provisional application accompanies this response for the Examiner's reference, attached herewith as Exhibit A. The application is in English, so no translation is required. Also attached as Exhibit B is a copy of form PCT/IB/304, which indicates that PCT/SG00/00130 claims priority to Australian Provisional Application No. PQ2593, filed on September 1, 1999.

In view of the foregoing, Applicants request that this application be accorded the priority date of September 1, 1999, which is the filing date of Australian provisional application no. PQ2593.

Claim Objection

Claim 63 is objected to because it contains acronyms. By virtue of this amendment, claim 63 has been amended to include the full name of the compounds to which the acronyms refer. Withdrawal of the claim objection is respectfully requested.

Compliance with Sequence Rules

The Office Action states that the application fails to comply with polynucleotide sequence requirements because paper and computer readable sequence listings have not been filed with regard the polynucleotide sequences referred to on page 26 of the specification. A sequence listing is filed concurrently herewith in compliance with 37 C.F.R. §§1.821 through 1.825.

Rejection under 35 U.S.C. §102(b)

Claims 57 and 59-61 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Lawrencia et al., *Conference Supplement to Cancer Gene Therapy, Gene Therapy of Cancer VII*, 12/1999, as evidenced by Lawrencia et al. (2001) *Gene Therapy* 8:760-768. Applicants respectfully traverse this rejection.

Both of the cited references were published after the priority date for this application. As discussed above, the application claims priority to Australian provisional application no. PQ2593/99, which was filed on September 1, 1999. The cited references both published after this date, and are therefore not available as prior art.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b).

Rejections under 35 USC §103(a)

Claims 57 and 63 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Lawrencia et al., *Conference Supplement to Cancer Gene Therapy, Gene Therapy of Cancer VII*, 12/1999, in view of Woodle et al (U.S. Patent Application No. 2003/0166601, published 9/4/03). Applicants respectfully traverse this rejection.

As discussed above, Lawrencia et al. is not available as prior art since it published after the priority date of the present application, and therefore cannot serve as an underlying reference to support an obviousness rejection.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

Claims 57, 64, and 65 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Felgner et al. (U.S. Patent No. 5,580,859, issued 3/18/94) in view of Lawrencia et al., *Conference Supplement to Cancer Gene Therapy, Gene Therapy of Cancer VII*, 12/1999).

As discussed above, Lawrencia et al. is not available as prior art since it published after the priority date of the present application, and therefore cannot serve as an underlying reference to support an obviousness rejection.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 578762000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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